IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

Case No. 00-33898

CATHERINE L. PRINTUP
a/k/a CATHERINE FLOWERS
a/k/a KATIE PRINTUP
a/k/a CATHERINE HOLLAND

Debtor

MEMORANDUM ON MOTIONS FOR SUMMARY JUDGMENT AND ON MOTIONS ON REQUESTS FOR ADMISSIONS

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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

On December 21, 2000, the Debtor filed a Motion for Sanctions against Bank One and/or Valley National Financial Service Company, Inc. (Valley National).[1] By her motion, the Debtor seeks damages, sanctions, and the return of a 1997 Chrysler LHS (and personal property contained therein) allegedly repossessed in violation of the automatic stay of 11 U.S.C.A. § 362(a) (West 1993 & Supp. 2000). By an Amended Motion for Sanctions filed January 5, 2001, the Debtor also seeks relief from Stewart Investigations & Recovery, Inc. (Stewart), the entity that repossessed the Chrysler.

An Order entered by the court on March 1, 2001, directed the parties to serve all written discovery requests by March 8, 2001. The Order reduced to twenty days the deadline for responding to discovery requests. On March 2, 2001, the Debtor served Bank One with Interrogatories to Bank One and a Request for Admissions. Bank One did not respond to either discovery request within the twenty-day period set by the court. As a result, on March 30, 2001, the Debtor filed a Motion to Declare Facts Admitted and for Partial Summery [sic] Judgment (Debtor's Motion) against Bank One. The Debtor's Motion asks the court to deem admitted the statements contained in her Request for Admissions due to Bank One's failure to respond.[2] Based

[1] Valley National is Bank One's predecessor in interest. References to Valley National in this Memorandum will therefore be deemed references to Bank One.

[2] Rule36(a) of the Federal Rules of Civil Procedure, made applicable to this matter by FED. R. BANKR. P. 9014 and 7036, provides in part that a requested fact ?is admitted unless, within 30 days after service of the request, *or within such shorter or longer time as the court may allow* . . . the party to whom the request is directed serves upon the party requesting the admission a written answer or objection . . . ." FED. R. CIV. P. 36(a) (emphasis added).

on the admitted statements, the Debtor's Motion also seeks partial summary judgment against Bank One.[3]

On April 6, 2001, Bank One submitted five separate documents: a Response to Debtor's Request for Admissions; a Response to Debtor's Interrogatories to Bank One; a Motion to Allow Late Discovery Responses; a Brief in Support of Motion to Allow Admission and Discovery Responses; and a Motion for Summary Judgment Combined with Brief in Support of Motion for Summary Judgment. The Debtor filed a Response to Motion for Summary Judgment (Response) on April 16, 2001.[4]

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(E), (O) (West 1993).

I

The Debtor filed her Chapter 7 Petition on September 27, 2000, and subsequently filed her required statements and schedules on October 16, 2000. She listed the Chrysler as personal property worth $17,550.00, securing an $18,646.54 auto loan from Valley National. On her Statement of Intention, the Debtor expressed her intent to surrender the vehicle to Valley National.

[3] Also contained within the Debtor's Motion was a request to compel Bank One to respond to the March 2, 2001 Interrogatories to Bank One. This request was summarily denied by the court pursuant to an Order entered on April 3, 2001, because the Debtor's Motion failed to include the certification required by FED. R. CIV. P. 37(a)(2).

[4] In her Response, the Debtor asserts that portions of the Affidavit of Donna Wadley contain inadmissible hearsay. Ms. Wadley is a custodian of records with Bank One and her Affidavit was submitted by Bank One in support of its summary judgment motion. As the challenged portion of the Affidavit is not necessary for the determination of the present motions, the court need not address the Debtor's evidentiary objections.

The Chrysler was purchased on February 28, 1998, in the name of the Debtor's estranged husband, Duane Printup. The Retail Installment Contract and Purchase Money Security Agreement (Sales Contract) signed solely by Mr. Printup provides that the contract is not assignable without Valley National's written consent. The Sales Contract also provides that Mr. Printup shall not ?sell or permit the property to be permanently removed from the State of Tennessee without the prior written consent" of the note holder and that Mr. Printup shall not ?permit the property to be removed from [his] possession."

Although her name is not on the Sales Contract or Registration of Title, the Debtor claims equitable title to the Chrysler asserting that: (1) it was purchased for her use; (2) she was responsible for taking the car in for servicing and for contacting Valley National and Bank One when necessary; and (3) car payments were made out of the Printups' joint checking account. A Used Vehicle Buyer's Order submitted by the Debtor in support of her Response lists both the Debtor and Mr. Printup as purchasers of the Chrysler and is signed by both the Debtor and Mr. Printup. The Debtor states that the Chrysler's title was placed in Mr. Printup's name solely for the purpose of avoiding an outstanding Florida judgment against the Debtor.

As of December 2000, the Chrysler debt was in default. On December 15, 2000, counsel for the Debtor contacted Bank One to advise that the Debtor was in bankruptcy and that the Debtor claimed ownership of the Chrysler. During this conversation, the Debtor's counsel expressed the Debtor's willingness to reaffirm the Chrysler debt. The Debtor's counsel also provided the address at which the car was currently located.

On either December 19 or 20, 2000, pursuant to Bank One's instructions, Stewart repossessed the Chrysler. Contained within the vehicle were various items of the Debtor's personal property. Bank One states that it repossessed the Chrysler, despite its knowledge of the Debtor's bankruptcy and her claim of ownership, because it had no evidence that the Debtor had an actual ownership interest in the car.

II

Rule 36 of the Federal Rules of Civil Procedure governs requests for admissions.[5] Rule 36(a) provides in pertinent part:

> Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney.

FED. R. CIV. P. 36(a). Accordingly, the failure of a party to answer a request for admissions within the proper time frame deems the requested matters admitted. As previously noted, Bank One failed to serve the Debtor with a written answer or objection within the twenty-day period set by the court.[6] Because of this failure, the items set forth in the Debtor's Request for Admissions are deemed admitted by Bank One.

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[5] Rule 36 in its entirety is made applicable to this matter by FED. R. BANKR. P. 9014 and 7036.

[6] In its Motion to Allow Late Discovery Responses, Bank One grounds its failure to timely respond to the Debtor's Request for Admissions on its inability to obtain the required responses from Bank One personnel, all of whom are in Arizona, within the reduced time directed by the court. Additionally, the person assigned to assist Bank One's counsel in obtaining the responses had a family emergency which delayed completion of the responses.

Any statement thus admitted is conclusively established unless the court on motion allows withdrawal or amendment of the admission. *See* FED. R. CIV. P. 36(b). Rule 36(b) directs:

> [T]he court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits.

FED. R. CIV. P. 36(b). Courts have "considerable discretion over whether to permit withdrawal or amendment of admissions." *Kerry Steel, Inc. v. Paragon Indus., Inc.*, 106 F.3d 147, 154 (6th Cir. 1997) (quoting *American Auto. Ass'n v. AAA Legal Clinic of Jefferson Crooke, P.C.*, 930 F.2d 1117, 1119 (5th Cir. 1991)).

The first half of Rule 36(b) is satisfied "when upholding the admission would practically eliminate any presentation on the merits of the case." *Riley v. Kurtz*, No. 98-1077, 1999 WL 801560, at *3 (6th Cir. Sept. 28, 1999) (quoting *Hadley v. United States*, 45 F.3d 1345, 1348 (9th Cir. 1995)). In other words, this prong is satisfied where the disputed admissions involve core issues or go to "the heart of the case." *See Riley*, 1999 WL 801560, at *3.

The second prong of Rule 36(b) considers whether withdrawal will prejudice the party who originally procured the admission. "[T]he prejudice contemplated by [Rule 36(b)] is not simply that the party who initially obtained the admission will now have to convince the fact finder of its truth." *Kerry Steel*, 106 F.3d at 154 (quoting *Brook Village N. Assocs. v. General Elec. Co.*, 686 F.2d 66, 70 (1st Cir. 1982)). Instead, prejudice under Rule 36(b) "relates to special difficulties a party may face caused by a sudden need to obtain evidence upon withdrawal or amendment of an admission." *Kerry Steel*, 106 F.3d at 154 (quoting *American Auto. Ass'n*, 930 F.2d at 1120). The

party who obtained the admission bears the burden of proving that withdrawal would prejudice that party's case. *See* FED. R. CIV. P. 36(b).

Bank One should be allowed to withdraw the admissions resulting from its failure to timely respond to the Debtor's Request for Admissions. The first prong of Rule 36(b) is satisfied because at least some of the disputed admissions involve ?core issues." *See Riley*, 1999 WL 801560, at *3. For example, the admissions concede that ?Duane Printup purchased the automobile for the exclusive use and benefit of the Debtor" and that the Debtor was the sole operator of the Chrysler. These factual issues are germane to the determination of the fundamental issue of whether the car is property of the Debtor's estate. The second prong of Rule 36(b) is also satisfied as the Debtor does not suggest that she will be prejudiced in any way by the withdrawal of the admissions. *See Kerry Steel*, 106 F.3d at 154.

III

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment shall be rendered if ?the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). Rule 56(c) is made applicable to this matter by Rules 9014 and 7056 of the Federal Rules of Bankruptcy Procedure.

The nonmoving party bears the burden of producing specific facts showing a genuine issue for trial. *See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 106 S. Ct. 1348, 1356 (1986) (citing FED. R. CIV. P. 56(e)). The facts, and all inferences to be drawn from them, must

be viewed in the light most favorable to the nonmovant. *See Matsushita*, 106 S. Ct. at 1356. The court's function is not to ?weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 106 S. Ct. 2505, 2511 (1986). In so doing, the court must decide whether ?the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 2512. If the court determines that there is no genuine issue of material fact, summary judgment is warranted ?if, under the governing law, there can be but one reasonable conclusion." *See id* at 2511.

IV

> Section 362(a) of the Bankruptcy Code establishes an automatic stay of, among other things:
>
> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
>
> (4) any act to create, perfect, or enforce any lien against property of the estate[.]

11 U.S.C.A. § 362(a)(3)-(4). The automatic stay arises by operation of law upon the filing of a debtor's petition and binds those with knowledge of the bankruptcy until the stay is properly lifted. *See NLT Computer Servs. Corp. v. Capital Computer Sys., Inc.*, 755 F.2d 1253, 1258 (6th Cir. 1985). The automatic stay ?gives the honest debtor an opportunity to protect his assets for a period of time so that the resources might be marshalled to satisfy outstanding obligations." *Laguna Assocs. Ltd. Partnership v. Aetna Cas. & Sur. Co. (In re Laguna Assocs. Ltd. Partnership)*, 30 F.3d 734, 737 (6th Cir. 1994).

Whether a violation of the automatic stay has occurred in the present case depends upon whether the Chrysler is property of the estate. *See* 11 U.S.C.A. § 362(a). **?**Property of the estate" is defined by § 541(a) to include in part:

> (1) . . . all legal or equitable interests of the debtor in property as of the commencement of the case.
>
> (2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—
>
> (A) under the sole, equal, or joint management and control of the debtor[.]

11 U.S.C.A. § 541(a)(1)-(2)(A). Courts should look to state law to determine the property rights included in a debtor's bankruptcy estate. *See Butner v. United States*, 99 S. Ct. 914, 917-18 (1979).

Under Tennessee law, a certificate of title is not conclusive evidence of the ownership of an automobile. *See, e.g., Smith v. Smith*, 650 S.W.2d 54, 56 (Tenn. Ct. App. 1983); *see also Brown v. Riley (In re Omni Mechanical Contractors, Inc.)*, 114 B.R. 518, 529 (Bankr. E.D. Tenn. 1990). The intention of the parties, rather than the certificate of title, determines ownership. *See Smith*, 650 S.W.2d at 56; *see also Norwood v. Crabtree (In re Crabtree)*, 39 B.R. 713, 715 (Bankr. E.D. Tenn. 1984). **?**[A] valid transfer of ownership of an automobile does not depend on compliance with the motor vehicle title laws, which were designed to deter trafficking in stolen cars." *Smith*, 650 S.W.2d at 56.[7]

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[7] In her Request for Admissions, the Debtor references Tenn. Code Ann. § 47-9-311. The version of the statute that was in effect at all times relevant to this controversy provides:

> The debtor's [Mr. Printup's] rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

(continued…)

V

Summary judgment is not appropriate in this case. A substantial ?genuine issue of material fact" exists regarding the Chrysler as property of the estate. Each party has submitted evidence supporting its position. The Debtor's discovery responses and affidavit assert that the car was a gift. Bank One has submitted copies of the Sales Contract and Certificate of Title as proof that the Debtor does not have an interest in the car. Under Tennessee law, the key issue is the parties' (the Debtor's and Mr. Printup's) intent. That ?genuine issue of material fact" remains in dispute.

For the reasons stated herein, Bank One's Motion to Allow Late Discovery Responses will be granted and the summary judgment motion filed by each party will be denied. An appropriate order will be entered.

FILED: April 20, 2001

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

[7](…continued)
TENN. CODE ANN. § 47-9-311 (1996). However, this commercial statute does not address transfer by gift and thus is not of great help to the Debtor.

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a/k/a CATHERINE HOLLAND

Debtor

O R D E R

For the reasons stated in the Memorandum on Motions for Summary Judgment and on Motions on Requests for Admissions filed this date, the court directs the following:

1. The Motion to Declare Facts Admitted and for Partial Summery [sic] Judgment filed by the Debtor on March 30, 2001, is, to the extent the Debtor seeks a declaration that the matters set forth in her Request for Admissions served on Bank One on March 2, 2001, are deemed admitted and requests a partial summary judgment, DENIED.

2. The Motion to Allow Late Discovery Responses filed by Bank One on April 6, 2001, is GRANTED.

3. The Motion for Summary Judgment Combined With Brief in Support of Motion for Summary Judgment filed by Bank One on April 6, 2001, is, to the extent summary judgment is requested, DENIED.

SO ORDERED.

ENTER: April 20, 2001

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE